

Appeal from a decision of the Montana State Office, Bureau of Land Management, denying request for approval of assignment of record title in oil and gas lease. MIBIL 021056(b).

Affirmed as modified.

1. Oil and Gas Leases: Assignments and Transfers

Where assignees refile for approval of a 1935 assignment of a title interest in an oil and gas lease, it is improper for BLM to disapprove the assignment on the ground that the current holders of record title did not execute the resubmitted request for approval, as assignees were seeking reconsideration of a 1936 GLO decision disapproving the 1935 assignment. The requirement that the transfer document be signed by the transferor has been satisfied when the record contains the original of the 1935 assignment, duly signed by the assignor, in apparent compliance with the filing rules in effect in 1936.

2. Oil and Gas Leases: Assignments and Transfers--Res Judicata

A 1936 GLO decision denying approval of a 1935 assignment became final in the absence of a timely appeal. Parties may resubmit a request for approval of an assignment, notwithstanding that a similar request had previously been finally rejected. However, such request for reconsideration of approval of the assignment is properly denied where no showing has been made that the circumstances cited by GLO for disapproval (failure to file affidavits showing the qualifications of the assignees or a \$5,000 lease bond) no longer exist, and where intervening rights of others and changes in circumstances have arisen over 60 years that render approval inequitable.

APPEARANCES: Glen R. Bruhschwein, Esq., Dickinson, North Dakota, for the Heirs of Mrs. M. H. Crawford; Chris Mangan, Jr., Esq., Billings, Montana, for Jane S. Norbeck, Trustee of the Jane Norbeck Trust.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

The Heirs of Mrs. M. H. Crawford (Crawford's Heirs) 1/ have appealed from the February 24, 1993, decision of the Montana State Office, Bureau of Land Management (BLM), denying their request for approval of assignment of record title in oil and gas lease MTBIL 021056B (formerly Billings 021056(b)) to them, as successors-in-interest of the assignee under an unapproved 1935 assignment from the original lessee.

The lease was originally issued to George Norbeck on October 10, 1934, for a term of 20 years (subject to renewal for successive 10-year periods) pursuant to section 14 of the Mineral Leasing Act, 41 Stat. 437, 442 (1919-21) (currently codified, as amended, at 30 U.S.C. § 223 (1994)). Among others, it covered the NE $\frac{1}{4}$  sec. 12, T. 8 N., R. 59 E., Principal Meridian, Fallon County, Montana. 2/ BLM's records show that the E $\frac{1}{2}$  of sec. 12 (including all the land in question) was covered by prospecting permit Billings 027602 issued to Adolph G. Norskog in 1928 under the Mineral Leasing Act of 1920. The prospecting permit became consolidated with two others (Billings 021056 and Billings 027360) and came into the ownership of Norbeck by assignments, the last being approved on June 2, 1931.

On December 16, 1932, Norbeck applied for an oil and gas lease for lands covered by the consolidated prospecting permits Billings 021056-027360-027602 on the basis of a discovery in lands other than sec. 12. That led, under then-prevailing law, to the segregation-out of the lands in sec. 12 (and others) under lease number Billings 021056(b) when the lease was issued to Norbeck. On June 30, 1934, the Secretary authorized the issuance of lease, and Billings 021056(b), covering the lands in question, 3/ was issued on October 10, 1934.

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1/ The Heirs of Mrs. M. H. Crawford have been identified as Alfred W. McGuire, Marjorie J. McGuire, Shirley J. MacDonald, Ralph Vernon Honeycutt, Fern E. Honeycutt, Diane E. Honeycutt, Calvin Guy Honeycutt, Eileen A. Honeycutt, Ellen Goldsworthy, and Olin I. McGuire.

2/ That land has been conveyed out of Federal ownership, subject to a reservation of oil and gas to the United States. Unit production has long been attributed to the leased land as a result of commitment to the Pennel Unit Agreement (No. 14-08-0001-8964), effective Oct. 1, 1968. In addition, following completion of the No. 33-12H well on Aug. 18, 1994, production was obtained from the leased land itself.

3/ By letter dated July 14, 1934, Norbeck actually requested that he be relieved of the obligation to pay rental (amounting to \$160 per year) on the NE $\frac{1}{4}$  of sec. 12 (the land in question here), on the grounds that those lands had not been included in a unit plan. That request was denied by the General Land Office (GLO), which invited him to file a relinquishment of his interest in the tract if he wished to avoid paying rental. We have no record that such relinquishment was filed.

On June 10, 1935, the Norbecks executed an assignment of the title interest in the lease on NE $\frac{1}{4}$  sec. 12 to Mrs. M. H. Crawford. 4/ The 1935 assignment from Norbeck to Crawford was filed for approval with GLO on August 6, 1935. By decision dated January 31, 1936, GLO, with the approval of the First Assistant Secretary of the Interior, denied approval of the assignment to Crawford, stating as follows:

[A]ssignment from George Norbeck to Mrs. M. H. Crawford, Santa Ana, California, of all right, title and interest in oil and gas lease Billings 021056(b), in so far as it covers the NE $\frac{1}{4}$  Sec. 12, T. 8 N., R. 59 E., subject to certain royalty reservations. No affidavits showing qualifications of the assignee or the \$5,000 lease bond have been filed.

(GLO Decision at 3 (emphasis supplied.)) The decision does not expressly state that the assignment from the Norbecks to Crawford was being disapproved, but it cited the failure to file the affidavits or the lease bond, either of which would disqualify the assignee from holding the lease. 5/ No appeal was taken from that decision.

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4/ The assignment was expressly subject to a May 16, 1934, agreement under which Norbeck had previously granted the Fidelity Gas Company (Fidelity) operating rights with respect to the lease in return for 25 percent of the net proceeds derived from any production from or attributed to the leasehold. According to the 1935 assignment, the royalty interest retained by Norbeck under the operating rights agreement with Fidelity was also separately assigned to Crawford. However, the State court in the case of Jane S. Norbeck, Trustee of the Jane Norbeck Trust v. Mrs. M. H. Crawford Et Al., No. DV 5436 (16th District Court, Montana), noted that it had been provided no copy of this separate instrument. Norbeck v. Crawford, No. DV 5436 (Montana 16th Judicial District Court, Fallon County, Memorandum and Order Granting Summary Judgment (Jan. 17, 1992)) at 12. Nor can we find it in the present record.

5/ In fact, the only reference to "the question of furnishing a \$5,000 bond" is made in reference to the concomitant GLO decision to deny assignments of interests in sands below 2,000 feet in depth, noting that "recogniz[ing] the right to assign according to the strata embraced in an oil and gas lease" would "complicate the handling of the oil and gas leases," including the question of "by whom the [\$5,000 bond] shall be furnished, and the compliance with other terms of the lease." (GLO Decision at 5.)

GLO adjudicated the validity of the assignment from Norbeck to Crawford in the same decision that it invalidated assignments of interests in strata below 2,000 feet in the NE $\frac{1}{4}$  (among others) from Norbeck to Atlantic Pacific Oil Company of Montana (APOC). This may or may not have been a coincidence. Careful scrutiny of the record indicates that APOC had actually assigned back these interests to the Norbecks in an effort to reunite title in them and freeing them to transfer title to Crawford. This view is not without its problems, as the transfer back of the interests in strata below 2,000 feet from APOC to Norbeck postdated by 1 day the transfer from the Norbecks to Crawford, the former being on June 11, 1935, and the latter on June 10, 1935. Thus, as of June 10, 1935, the date that the Norbecks transferred title to Crawford, the Norbecks owned only title to oil and gas sands above 2,000 feet and its assignment to Crawford on June 11, 1935, could have covered only those strata.

No further effort was made to secure Departmental approval of the assignment of Norbeck's title interest to Crawford, who died on June 7, 1956. 6/

Although George Norbeck died intestate on October 22, 1938, the record title remained thereafter in the name of George Norbeck. Finally, at BLM's instigation beginning on November 12, 1968, Norbeck's surviving heirs-at-law, who had previously been unaware of Norbeck's record title to the lease, sought to have that interest transferred to them, and then from them to Julius A. Bernard, Trustee of the Jane Norbeck Trust (Trust). (Letters to BLM from Kermit Norbeck, dated Nov. 8, 1968, and Jan. 27, 1969.) By letter dated May 5, 1969, BLM informed Norbeck's heirs-at-law that the record title would remain in the name of the Estate of George Norbeck pending the submission of additional documentation. Nothing further was submitted, and the matter languished until 1987.

Following the receipt of all the appropriate documents, BLM, by decision dated August 18, 1987, recognized the transfer of the record title interest from the Estate of George Norbeck to his surviving heirs-at-law. 7/ On that date, BLM also approved the assignment of the title interest, effective August 1, 1987, from Norbeck's Heirs to the Trust. 8/ Finally, on September 21, 1988, BLM recognized the appointment of Jane S. Norbeck as the successor trustee of the Trust.

At all times, the Department has treated Norbeck and his successors-in-interest as the record title holders of the lease, renewing the lease in his name on two successive occasions (effective Oct. 1, 1954, and Oct. 1, 1964). It was thereafter held by commitment to the Pennel Unit Agreement, with BLM accepting rental and royalty payments from Norbeck's successors-in-interest or their duly appointed representatives.

On October 22, 1990, the Trust filed a complaint in the District Court, Sixteenth Judicial District, County of Fallon, State of Montana,

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fn. 5 (continued)

GLO's consolidation of its consideration of the assignments to APOC and Crawford suggests that it was faced with a situation that had, at least, been complicated by the Norbecks' improper assignment of interests in strata, rather than interests in the entire leasehold, and that GLO wished simply to clear the record so that title could be simplified.

None of this is controlling, however, as GLO plainly found two grounds for disapproving the assignment from the Norbecks to Crawford that were unrelated to the state of the Norbecks' title on June 10, 1935.

6/ We note that, although Crawford did not again seek approval of the 1935 assignment to her, Fidelity sought (on her behalf) to have the lease issued in her name when it was renewed in 1954 (Application for Renewal of Oil and Gas Lease, dated July 20, 1954). This request was denied by GLO decision dated Mar. 29, 1955, because GLO had never approved assignment of the lease to her. No appeal was taken from that decision.

7/ These persons are Helen N. Bernard, Colette M. Norbeck, Virginia Norbeck, and Sterling M. Norbeck.

8/ The assignment was made to Julius A. Bernard as Trustee.

against Mrs. M. H. Crawford (the assignee in the 1935 assignment) and her heirs. The Trust sought to be recognized, under State law, as owner of a 25 percent royalty interest retained by Norbeck in his May 1934 operating rights agreement with Fidelity. <sup>9/</sup> The Trust sought judicial recognition that it, rather than Crawford and her heirs, held title to the lease and thus had succeeded to Norbeck's royalty interest under that agreement. <sup>10/</sup> The case was styled Jane S. Norbeck, Trustee of the Jane Norbeck Trust v. Mrs. M. H. Crawford, No. DV 5436.

On February 14, 1992, the court issued a final Judgment in Norbeck v. Crawford, which was based on its Memorandum and Order Granting Summary Judgement (Memorandum), dated January 17, 1992. The court first concluded, in its memorandum, that the June 10, 1935, assignment from Norbeck to Crawford was not necessarily void as between the parties as a result of GLO's January 1936 denial of approval of the assignment, and that Crawford's Heirs were not barred (by laches or otherwise) from resubmitting the assignment for approval by the Department, especially since the Department had never held that Crawford was not qualified to hold the lease or that the assignment was otherwise deficient. (Memorandum at 7, 11.)

However, the Court also held that, absent the Department's approval, the assignment was "not effective" under 30 U.S.C. § 187a (1994), citing Oasis Oil Co. v. Bell Oil & Gas Co., 106 F. Supp. 954, 957 (W.D. Okla. 1952). (Memorandum at 7.) Accordingly, the court noted that Norbeck and his heirs remained and continued to "remain responsible to perform all obligations under the lease, and \* \* \* entitled to receive the benefits under the lease." (Memorandum at 7, 11.) Nonetheless, in recognition of the existing "equitable rights" of Crawford's Heirs under the assignment, the court afforded them "one last chance to enforce the assignment against" the Trust:

[T]he Court will quiet title in [Crawford's Heirs] to the leasehold interest [<sup>11/</sup>] and proceeds to accrue as currently provided by 30 U.S.C. 187a, subject to the approval of the Secretary of the Interior. If, however, the Secretary fails to approve the assignment this time, the entire leasehold interest shall revert to the [Trust] and [Crawford's Heirs'] rights shall be extinguished.

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<sup>9/</sup> See note 5, above.

<sup>10/</sup> The ultimate purpose of the suit was to obtain the net proceeds of production attributed since October 1968 to the lease under the Pennel Unit Agreement (and not escheated to the State), which proceeds (amounting to over \$420,000) were then being withheld by the unit operator, Shell Oil Company (Shell), pending a final determination regarding the true owner of the lease. (Letter to BLM from Counsel for the Trust, dated Oct. 23, 1990; Letter to Counsel for the Heirs from Shell Western E&P, Inc., dated Mar. 13, 1991.)

<sup>11/</sup> The "leasehold interest" was the 25 percent royalty interest that Norbeck had retained in his May 1934 operating rights agreement with Fidelity. (Judgment at 2.)

[Crawford's Heirs] will be given one more reasonable opportunity to obtain the consent of the Secretary of the Interior to the assignment of [the] lease. If successful, title will be quieted in [Crawford's Heirs] to the leasehold interest and the proceeds thereof effective as of the date provided by 30 U.S.C. Sec. 187a. [12/] If unsuccessful, title will be quieted in the [Trust].

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[T]his Court's ruling on [the] quiet title claims should be sufficient to convey the interest to [Crawford's Heirs] to which they are entitled.

(Memorandum at 11-12, 13, 15.) In its Judgment, the court provided:

Subject to approval of the Secretary of the Interior of the assignment dated June 10, 1935 by George Norbeck and wife to Mrs. M. H. Crawford, [Crawford's Heirs] \* \* \* shall collectively own and have title to \* \* \* [the leasehold] interest and all production and proceeds of production attributed to th[at] interest after the effective date of the approval of said assignment by the Secretary of the Interior. [13/]

(Judgment at 2-3.) The court thus concluded that, with Departmental approval, the assignment would take full effect under 30 U.S.C. § 187a (1994), but that, without approval, it would not, such that title (and the interest) would be returned to the Trust, as Norbeck's successor-in-interest.

The District Court's judgment was affirmed by the Montana Supreme Court in Norbeck v. Crawford, 836 P.2d 1231 (Mont. 1992), which also concluded that, until the 1935 assignment from Norbeck to Crawford was approved by the Department, it would not be effective under 30 U.S.C. § 187a (1994), so that the benefits of the lease remained with the Trust, as Norbeck's successor-in-interest. Id. at 1233, 1234. However, the court also affirmed the lower court's judgment to the extent that it "allowed the Crawford [H]eirs the opportunity to perfect the assignment [of that royalty interest] by seeking approval of the Secretary of Interior under 30 U.S.C. § 187a," and thus to obtain that interest. Id. at 1234.

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12/ The court stated that the effective date of the assignment would, in accordance with 30 U.S.C. § 187a (1994), be the first day of the lease month following that in which the Heirs filed a proper request for approval of the assignment. (Memorandum at 7-8.)

13/ However, the court concluded that the Heirs will only own 39/40ths (rather than all) of the royalty interest, since one of their original number (Dorothy Milliken), who also does not appear here, had failed to properly preserve her interest therein by participating in the State court proceeding, and thus was barred by the doctrine of laches. (Memorandum at 8; Reply to Plaintiff's Brief, dated May 16, 1991, at 3.) For the sake of simplicity, we shall refer to the interest adjudicated by the Court as the whole interest.

On September 30, 1992, Crawford's Heirs inquired of BLM as to how they might secure Departmental approval of an assignment of a title interest in the lease to them, in view of the just-concluded State court litigation. BLM responded in a letter dated October 29, 1992, advising that, in order to tender a proper request for approval of an assignment, they must comply with the requirements of 43 C.F.R. § 3106.4-1, including submission of three assignment forms, entitled "Assignment of Record Title Interest in a Lease for Oil and Gas or Geothermal Resources" (Form 3000-3 (March 1991)). BLM advised that those forms must be executed both by the Trust, as the assignor, and Crawford's Heirs, as the assignees. 14/

On February 17, 1993, the Heirs filed three identical assignment forms. 15/ They were all signed on February 16, 1993, by Mark Snead, President, International Searchers, Inc., as attorney-in-fact for Crawford's Heirs, applying as assignees. However, the forms, which listed George Norbeck as the assignor, did not bear his signature. Rather, they referred to the original assignment of June 10, 1935, from George Norbeck to Mrs. M. H. Crawford. In the cover letter accompanying the assignment forms, counsel for Crawford's Heirs explained their failure to submit forms executed by the Trust: "I understand that your job would be much simplified if the present record leaseholder (Norbeck Trust) would simply assign

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14/ "Part A" of the assignment form identifies the assignee and the interest to be assigned. "Part B" constitutes a "Certification and Request for Approval" by the parties to the assignment. By executing the document, the assignor thereby certifies, as "owner" of record title to the lease, that it is assigning that interest to the named assignees. The assignees thereby certify that they are qualified to hold a Federal oil and gas lease and accept the terms and conditions of the lease.

The cited regulation, 43 C.F.R. § 3106.4-1, provides:

"Each transfer of record title \* \* \* shall be filed with the proper BLM office on a current form approved by the Director [BLM] \* \* \*. A separate form for each transfer, in triplicate, originally executed shall be filed for each lease out of which a transfer is made. Only 1 originally executed copy of a transferee's request for approval for each transfer shall be required \* \* \*."

Moreover, 43 C.F.R. § 3102.4(b) provides:

"Three copies of a transfer of record title \* \* \*, as required by section 30a of the [Mineral Leasing Act, as amended, 30 U.S.C. § 187a (1994)], shall be originally signed and dated by the transferor or anyone authorized to sign on behalf of the transferor. However, a transferee, or anyone authorized to sign on his or her behalf, shall be required to sign and date only 1 original request for approval of a transfer."

15/ The assignment forms stated that the interest conveyed was 39/40ths of the 25 percent royalty interest, as well as the net proceeds attributable thereto, reserved to Norbeck under his May 1934 operating rights agreement with Fidelity. Crawford's Heirs later verbally amended the forms to specifically encompass the record title interest in the lease, and BLM adjudicated it on that basis. (BLM Decision at 1.) We will do likewise, as it is clear that the Heirs, by seeking Departmental recognition of their ownership of the royalty interest, were really seeking its recognition of their title ownership, and as Departmental approval is not required for a transfer of royalty interests or production payments. See 43 C.F.R. § 3106.1(b).

its interest prospectively [by] executing Form 3000-3 in triplicate. We have explored that possibility but have been informed by [the Trust's] attorney that such cooperation will not be forthcoming."

In its February 1993 decision, BLM denied Crawford's Heirs' request for approval of the assignment, because the assignment was executed by George Norbeck, rather than the Trust, as the current record title holder. BLM explained: "We cannot retroactively recognize a transfer of the [record title] interest from the Estate of George Norbeck because the interest is no longer held in the name of the Estate." (Decision at 2.) <sup>16/</sup> Rather, BLM noted that the original assignment from George Norbeck to Mrs. M. H. Crawford had been rejected by GLO on January 31, 1936; that the record title interest had passed to Norbeck's estate upon his death in 1938 and then to his heirs-at-law, all as recognized by BLM; and that BLM had approved assignment of that interest to the Trust effective August 1, 1987. Thus, BLM held that, at the time the request for approval of the assignment was made on February 17, 1993, the Trust was the holder of the record title interest and, as such, the proper party to effect the assignment. Since it did not do so, BLM denied Crawford's Heirs' request for approval. They appealed from the February 1993 BLM decision.

[1] We are not persuaded to affirm BLM's decision for the reasons set out therein. What Crawford's Heirs seek is reconsideration of the request for approval of the original assignment from Norbeck to Crawford (see Joseph Alstad, 19 IBLA 104, 111-12 (1975)), not approval of an assignment from the current holders of record title to Crawford's Heirs. Nothing shows that the paperwork submitted in 1935 for that assignment was inadequate. The current regulation requires the signature only of the "transferor" (or someone authorized to sign on his or her behalf). 43 C.F.R. § 3102.4(b). That requirement, we hold, was met by the submission of the original agreement between Norbeck and Crawford.

[2] However, we find no basis to determine that the assignment should now be approved. GLO's January 1936 decision denying approval of the 1935 assignment from Norbeck to Mrs. M. H. Crawford became final in the absence of a timely appeal, and no compelling legal or equitable reasons have been demonstrated for now overturning it. Thus, it stands as a final decision of the Department. See Turner Brothers Inc. v. Office of Surface Mining Reclamation & Enforcement, 102 IBLA 111, 121 (1988). In some circumstances, parties may resubmit a request for approval of an assignment, notwithstanding that a similar request had previously been rejected, even when that rejection has become final. See Joseph Alstad,

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<sup>16/</sup> In actuality, the Heirs had sought recognition of a transfer of the record title interest directly from George Norbeck to them since they had referenced the original assignment in the assignment forms filed with BLM on Feb. 17, 1993. Thus, BLM was mistaken in referring to the Estate.



19 IBLA at 111-12; D. J. Simmons, 64 I.D. 413, 416-17 (1957). <sup>17/</sup> However, power to reconsider is very limited, being "subject to intervening rights of others and to changes in circumstances" (Joseph Alstad, 19 IBLA at 112) and available only "in the absence of intervening assignees or other adverse interests." Alice R. Rudie, A-30061 (March 25, 1964).

It is appropriate in such circumstances for the appellate decisionmaker to review the matter to determine whether there are sufficient grounds presented by the party seeking reconsideration to justify disturbing the action of a land manager. D. J. Simmons, 64 I.D. at 417. In doing so here, we find no basis to disturb GLO's denial of the request for approval.

One of the purposes of disapproving late-filed requests for approval of assignment is to encourage assignees to file the assignment promptly so that third parties can gain notice of the transfer and thereby be on notice as to who owns the lease. James V. O'Kane, 19 IBLA at 175. The interest now sought by Crawford's Heirs cannot be granted because an intervening assignment involving all of the interest (from the Norbecks to the Jane M. Norbeck Trust) was in fact subsequently approved by BLM. That action bars approval of the late-filed request. See Alminex USA, Inc., 55 IBLA 315, 317 (1981).

Further, there is no doubt that, during the more than 50 years between the execution of the assignment and its resubmission for approval in 1992, parties have altered their circumstances in reliance on GLO's denial of approval. The lessees of record continued to pay rental and royalty and to maintain bonds on the leasehold throughout this period, and Norbeck and his heirs have twice renewed the lease. Parties have relied on Norbeck's status as owner in developing unit agreements. When Crawford allowed GLO's decision denying approval of the assignment to her to become final, the burden of overcoming it increased, as it was necessary to show not only that the identified impediment to approval no longer existed, but also that no intervening rights or changes in circumstances had occurred that would render approval inequitable. During the more than 50 years in which Crawford and her heirs failed to attempt to rectify the disapproval of the original assignment, intervening rights of Norbeck's heirs have undeniably arisen and changes in circumstances have undeniably occurred. <sup>18/</sup>

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<sup>17/</sup> Alstad considered a regulation, 43 C.F.R. § 3106.3-1 (previously codified at 43 C.F.R. § 192.141(a)(2) (1964)), providing that, in order to obtain approval of an assignment affecting record title, the assignment must be filed within 90 days from the date of execution of the assignment by the parties involved. That regulation was not in effect in 1936. The Board ruled that the 90-day deadline was not a mandatory requirement and that failure to comply does not require rejection of an assignment. James V. O'Kane, 19 IBLA 171, 175 (1975).

<sup>18/</sup> In these circumstances, it is unnecessary to reach the question whether the issuance of renewal leases in 1954 and 1964 foreclosed the possibility of granting an assignment of title affecting the 1934 lease. See Joseph Alstad, 19 IBLA at 112.

Although the Montana courts ruled that the title passed to Crawford in 1935, and thus could not have passed to Norbeck's estate in 1938, those courts have also ruled that whatever rights Crawford's Heirs had would be "extinguished" if the Department failed to approve the assignment. As that contingency (disapproval of the request for assignment) has now occurred, it is clear that title resides with Norbeck's heirs.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed as modified.

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David L. Hughes  
Administrative Judge

I concur:

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Will A. Irwin  
Administrative Judge